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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 701,284	11 28 2000	Hiroyuki Kyushima	107999	8940

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EXAMINER

ZIMMERMAN, GLENN

ART UNIT PAPER NUMBER

2879

DATE MAILED: 06 06 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/701,284

Applicant(s)

KYUSHIMA ET AL.

Examiner

Glenn Zimmerman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 5, 8 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

## **DETAILED ACTION**

### ***Response to Amendment***

Amendment, filed on March 3, 2003, has been entered and acknowledged by the examiner.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 5B in figure 6, 2C in figure 8 and 20 in figure 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: On page 25 line 4, the examiner suggests changing "tubs" to "tubes."

Appropriate correction is required.

### ***Claim Objections***

Claims 8 is objected to because of the following informalities: In claim 8 line 3, the examiner suggests changing "entirety" to "the entirety". This change is mainly to make the claim sound better. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The shaped substantially like an angular cylinder of the metal tube is what also helps the tubes to be densely packed, and reduces the amount of dead space, which allows for less non-sensitive areas. Purely cylindrical tubes that are not angular have a lot of dead space where the angular cylindrical metal tubes represented in the figures and specification possess the densely packed quality.

Claim 7 recites the limitation "the fusion welding" in line 3. There is insufficient antecedent basis for this limitation in the claim.

A 112 2<sup>nd</sup> paragraph rejection has been determined for claim 1, as written about above. However, a further evaluation of the claim will be done while interpreting "a

metal side tube" in line 9 as "a metal side tube, which is shaped substantially like an angular cylinder,".

A 112 2<sup>nd</sup> paragraph rejection has been determined for claim 4, as written about above. However, a further evaluation of the claim will be done while interpreting "a metal side tube" in line 11 as "a metal side tube, which is shaped substantially like an angular cylinder,".

A 112 2<sup>nd</sup> paragraph rejection has been determined for claim 7, as written about above. However, a further evaluation of the claim will be done while interpreting "claim 4" in lines 2-3 as "claim 6".

A 112 2<sup>nd</sup> paragraph rejection has been determined for claim 10, as written about above. However, a further evaluation of the claim will be done while interpreting "a metal side tube" in line 20 as "a metal side tube, which is shaped substantially like an angular cylinder,".

Claims 2,3 and 5-9 are rejected for depending from a rejected claim.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

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patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 and 6-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 or 7 of U.S. Patent No. 6,472,664. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims identicalness would have been obvious to a person having ordinary skill in the art.

Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,472,664. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims identicalness would have been obvious to a person having ordinary skill in the art.

#### ***Allowable Subject Matter***

Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 5 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 5, the following is an examiner's statement of reasons for allowance: The prior art of record neither shows nor suggests a photomultiplier tube including the combination of all the limitations as set forth in claim 5, and specifically wherein a cutout portion is formed in the top surface of an edge of the stem plate for supporting the bottom end of the metal side tube could not be found elsewhere in prior art.

Regarding claim 9, the following is an examiner's statement of reasons for allowance: The prior art of record neither shows nor suggests a photomultiplier tube including the combination of all the limitations as set forth in claim 9, and specifically wherein the stem plate comprises a metal stem support member, and a glass stem plate, the metal stem support member being in contact with the bottom end of the metal side tube extending substantially in an axial direction of the metal side tube could not be found elsewhere in prior art.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Zimmerman whose telephone number is (703) 308-8991. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimesh Patel can be reached on (703) 305-4794. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7382 for regular communications and (703) 308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is n/a.

  
Glenn Zimmerman  
May 23, 2003

  
ASHOK PATEL  
PRIMARY EXAMINER